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OFFICE OF THE
EXECUTIVE SECRETARY

Via Facsimile and Overnight Delivery

March 11, 2002

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: Petition of Tennessee UNE-P Coalition to Open a Contested Case
Proceeding to Declare Switching an Unrestricted Unbundled Network
Element, Docket No. 02-00207

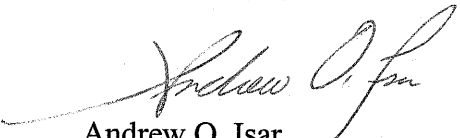
Dear Mr. Waddell:

Enclosed are an original and thirteen copies of the *Response of the Association of Communications Enterprises to BellSouth Telecommunications, Inc.'s Objection to Intervention of ASCENT*, in the above-referenced matter.

Questions may be addressed to the undersigned.

Sincerely,

ASSOCIATION OF COMMUNICATIONS
ENTERPRISES


Andrew O. Isar
Director – State Affairs

Cc: Joelle Philips, Esq.
Henry Walker, Esq.

POSTED
3/13/02

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Tennessee UNE-P Coalition to Open a Contested Case Proceeding to
Decalre an Unrestricted Unbundled Network Element*

Docket No. 02-00207

**RESPONSE OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES TO
BELL SOUTH TELECOMMUNICATIONS, INC.'S OBJECTION
TO INTERVENTION OF ASCENT**

The Association of Communications Enterprises (“ASCENT” or the “Association”), on behalf of its members, responds to BellSouth Telecommunications, Inc.’s (“BellSouth”) March 8, 2002 objection to ASCENT’s intervention in the instant proceeding.¹ ASCENT maintains that as an industry association representing the interests of a variety of members who may now, or in the future, provide competitive local exchange services through the provision of unbundled network elements, including unbundled local switching in Tennessee, and who are not able to intervene in their own right, there should be no question as to the Association’s legal nexus in this proceeding, consistent with Tennessee Regulatory Authority (Authority”) Rule 1220-1-2-.08 and past Authority action.

On February 28, 2002, ASCENT intervened in this proceeding “for the specific purpose of *monitoring* this proceeding and *submitting comments or briefs*, as appropriate [emphasis added].”² ASCENT stressed that its intervention would “not unduly broaden the

¹ *BellSouth Telecommunications, Inc.’s Objection to Intervention*, Docket No. 02-00207 (March 8, 2002) [“Objection”].

² *Petition to Intervene of the Association of Communications Enterprises*, Docket No. 02-00207 [“Petition”] at 2.

issues involved in this proceeding or prejudice other parties.”³ Nevertheless, BellSouth, true to its obstructionist policies, on March 8, 2002, filed an objection to ASCENT’s intervention.

BellSouth’s Objection claims that ASCENT has failed demonstrate that it has met the legal interest standard for intervention pursuant to Rule 1220-1-2-.08, either through its original intervention petition or through the Association’s March 7, 2002 response to BellSouth’s request for additional information.⁴ It is unclear just what level of specificity BellSouth now maintains is necessary for ASCENT -- or any other legally formed industry association or entity -- to satisfy the requirements of Rule 1220-1-2-.08 beyond the representation made to the Authority through ASCENT’s February 28, 2002 intervention:

ASCENT members have a substantial and material interest in, and will be materially effected by, the petition in the instant proceeding to require BellSouth to provision unbundled local switching as an unbundled network element (UNE). The ability to access unbundled local switching as a UNE will have profound impact upon the ability of such telecommunications service providers to enter the local telecommunications market in Tennessee.

The *raison de être* of any industry group is to represent the interests of its members specifically, including those who are unable to represent themselves, and an industry generally, under a single party. Industry association interventions have become an established and accepted practice for joint representation of multiple entities with related interests.

ASCENT’s established mandate is to

³ *Id.*

⁴ Contrary to BellSouth’s characterization of its March 6, 2002 letter to the Authority “requesting further information regarding the nexus between ASCENT or its members and the matters raised in this docket...” (Objection at 1), BellSouth requested only the “that ASCENT provide a list of those entities... [authorized by the Authority] to provide competitive local exchange services in Tennessee,” a request to which ASCENT responded. BellSouth’s March 6th letter explained that it had not been able to determine whether to oppose ASCENT’s intervention “...because it is unclear from the Petition what telecommunications providers authorized by the Authority to provide competitive local exchange service in Tennessee, are actually members of ASCENT.” That BellSouth had indeed sought additional information to establish the nexus between ASCENT, its members, and this proceeding, as it now claims, was certainly less than clear, if not entirely ambiguous. It is disingenuous and incorrect of BellSouth to now claim that ASCENT’s March 7, 2002 response to BellSouth’s narrowly formulated request fails to meet the legal interest test for intervention pursuant to Rule 1220-1-2-.08.

... open all communications markets to full and fair competition and to help member companies' design and implement successful business plans. ASCENT strives to assure that all service providers, particularly entrepreneurial firms, have the opportunity to compete in the communications arena and have access to critical business resources.

It is under this mandate that ASCENT intervened in this proceeding.

BellSouth's opposition boils down to a contention that for ASCENT to meet the requirements of Rule 1220-1-2-.08, ASCENT must list with specificity each member who now, or in the future, could be impacted by the outcome of this proceeding. Yet ASCENT's intervention as an industry association is made irrespective of which specific entities are Association members, which members serve in a given state, and which members may be impacted now or in the future. That ASCENT does not maintain voluntarily information on where each of its members is authorized to provide competitive local services, in no way affects the Association's understanding of those issues of import to its competitive local exchange members, nor its ability to effectively represent its members' interests, regardless of where those members may serve. Moreover, such information is irrelevant for purposes of ASCENT's intervention here.

In the instant proceeding, ASCENT intends to represent the interests of its competitive local exchange carrier members who either utilize, or may elect to utilize unbundled network elements, including unbundled local switching, in providing competitive local exchange services to Tennessee subscribers, consistent with ASCENT mandate. The outcome of this proceeding will affect how, or if, association members and others will be able to offer competitive local services under an unbundled network element platform which includes a local switching element. What greater "legal interest" ASCENT must demonstrate in this proceeding is unclear.⁵ That ASCENT must identify each of its more than 500

⁵ It is interesting to note that this is the first time BellSouth has objected to ASCENT's intervention in Tennessee for failure to demonstrate legal interest pursuant to Rule 1220-1-2-.08. No such opposition has

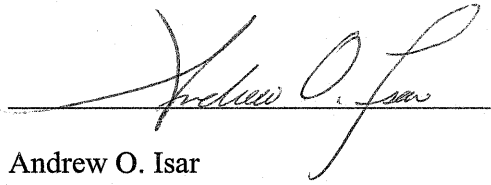
members and their potential interests to meet the legal interest standard of Rule 1220-1-2-.08 in this matter, as BellSouth suggests, is sheer nonsense and calculated to preclude ASCENT from its lawful intervention.

Contrary to BellSouth's vague assertions, ASCENT has again met its obligation to demonstrate its legal interest in an Authority proceeding under Rule 1220-1-2-.08. The identification of specific members and their interests, even if such detailed information were available to ASCENT, or any other ambiguous BellSouth intervention criterion is entirely irrelevant to ASCENT's appropriate, albeit limited, participation in a proceeding that will impact its competitive local exchange carrier members. ASCENT respectfully reiterates its request that the Authority grant ASCENT's intervention in this proceeding.

Respectfully submitted this 11th day of March, 2002.

ASSOCIATION OF COMMUNICATIONS
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By: _____


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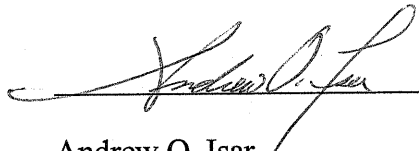
been raised by BellSouth in any previous ASCENT interventions in Authority proceedings. Moreover, ASCENT's (then the Telecommunications Resellers Association) intervention in Docket No. 97-01399, *In Re: Petition of BellSouth Telecommunications, Inc. for Approval of an IntraLATA Toll Dialing Party Plan* was granted by the Pre-Hearing Officer without the identification of specific members and their interests BellSouth purports to seek here. In that proceeding, the Pre-Hearing Officer found, "Further, the Petitions [of the Telecommunications Resellers Association, Sprint, and Time Warner] set out sufficient facts to demonstrate that the legal rights, duties, and privileges and interests of the petitioners may be determined in this proceeding. *Order of Pre-Hearing Officer Granting Petitions to Intervene*, Docket No. 97-01399, (December 4, 1998) at 3, citing to Tenn. Code Ann §4-5-310(a), which includes §4-5-310(a)(2) specifically, whose language is reflected almost verbatim in Rule 1220-1-2-.08.

CERTIFICATE OF SERVICE

I hereby certify that on this day, March 11, 2002, I served the foregoing *Response of the Association of Communications Enterprises to BellSouth Telecommunications, Inc.'s Objection to Intervention of ASCENT* on the following known parties by causing to be sent via facsimile a true copy thereof.

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